IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3659 OF 1997

Shri Pious K. David..... .... Petitioner
V/s
The Director of Technical Education & Ors..... .....
Respondents.

Mr.Jaydeo Trivedi i/by Mr.M.M.Vashi, Adv. for the petitioner

Mr.D.A.Patil, AGP for respondent No.1.

CORAM: A.P. DESHPANDE, J.
16.6.2007

ORAL JUDGMENT:

The petitioner challenges the judgment and order passed by the Presiding Officer, School Tribunal, Mumbai whereby the appeal filed by the petitioner against an order of termination had been dismissed.

2. The respondent Nos. 2 to 4 represent Vivekanand Education Society Polytechnic. The said Polytechnic has its apex body by name All India Council of Technical Education (AICTE) which regulates and prescribes the eligibility for lecturers and instructors appointed in polytechnic. It is the case of the petitioner that he was initially appointed as an Instructor in Polytechnic in the year 1985 and thereafter was promoted to the post of Lecturer in the year 1987. The petitioner came to be selected by the Ministry of Education, Government of India to work with the Ministry of Education, Government of Botswana, Africa for a period of five years from 1997 onwards. It is the case

of the respondents that the petitioner had resigned his services when he proceeded to accept the assignment in Africa. The petitioner has no where claimed that the petitioner had lien over the post in the establishment of respondent Nos. 2 to 4. It i also not demonstrated that the rules permit keeping of a lien on the post and accepting assignment in foreign country for a long period of five years. After the petitioner returned from foreign assignment he was appointed as a lecturer by respondent Nos. 2 to 4 by an order of appointment dated 30.11.1992 which is filed at Exh.C. Perusal of the said appointment order reveals that the petitioner was temporarily appointed with effect from 1.12.1992. The said temporary appointment of the petitioner was not approved. The respondent No.1 has rejected the proposal seeking approval to the appointment of the petitioner as a Lecturer in Polytechnic. On account of refusal to approve the appointment of the petitioner, the respondent Nos. 2 to 4 have proceeded to terminate the petitioner from service by an order of termination dated 29.11.1994. It is thus clear that the petitioner was terminated before completion of two year of service which is probation period prescribed under the statute. The petitioner preferred an appeal before the Presiding Officer, School Tribunal and questioned the legality and validity of the order of termination on the ground that he is permanent employee and hence cannot be terminated without holding an inquiry. Per contra the respondents 2 to 4 opposed the claim of the petitioner before the Tribunal by pointing out that as the department did not approve the petitioner's appointment the management was constrained to terminate the petitioner from service. The office of the

Director had declined to approve the appointment on two grounds viz; (i) that the petitioner was not selected after following proper selection procedure and (ii) that the petitioner was only Diploma Holder in Mechanical Engineering, II class, whereas the requisite qualification as per the norms prescribed by AICTE is First Class B.E. in Mech. The Tribunal accepting the stand of the management has dismissed the appeal filed by the petitioner.

3. The learned counsel for the petitioner submits that the petitioner needs to be treated as in continuous service right since his initial appointment. Nothing has been placed on record to indicate that the petitioner had a lien over the post when he accepted the assignment with the Ministry of Education, Government of Botswana, Africa for a period of five years i.e. from 1987 onwards. Rules are not pointed out which permit keeping of lien for a period of five years. Perusal of the appointment order issued in the year 1992 clearly reveals that the appointment was temporary in nature. It also appears to be the stand of the respondent that the petitioner had resigned when he accepted the foreign assignment. Neither the appeal memo nor written statement has been placed on record. The letter of resignation purported to have been tendered by the petitioner has also not been filed on record. The learned counsel appearing for the petitioner is not in a position to demonstrate as to which rules were in force in November, 1992 laying down the qualification and eligibility for the post of lecturer in polytechnic. In the absence of adequate material being placed on record it is not possible to appreciate the submission made by the learned counsel for the petitioner. In view of the facts stated herein above I do not

find any illegality in the judgment of the Tribunal which goes to hold that the petitioner was not a permanent teacher when his services came to be terminated in the year 1994. The norms laid down by AICTE which were holding field in the year 1992 are also not brought to my notice. It may not be out of place to state that under the appointment order dated 30.11.1992 the petitioner has served for less than two years and is out of employment since his termination effected in the year 1994. Hence it is not possible to hold that the judgment and order passed by the School Tribunal is illegal. No interference with the judgment of the School Tribunal is called for. In the result writ petition fails and the same is summarily dismissed. Rule discharged.